

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of DAVID M. GRUBB and U.S. POSTAL SERVICE,
POST OFFICE, Las Cruces, NM

*Docket No. 99-1464; Submitted on the Record;
Issued April 5, 2001*

DECISION and ORDER

Before MICHAEL J. WALSH, MICHAEL E. GROOM,
PRISCILLA ANNE SCHWAB

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128.

The Board has duly reviewed the case record and finds that the Office acted within its discretion in denying appellant's request for a review of the merits of his claim.

The Office accepted appellant's claim for a lumbosacral strain, disc derangement, an L5-S1 herniated disc and aggravation of depression resulting from his back condition. On February 10, 1995 appellant, then a 35-year-old letter carrier, filed an occupational disease claim, alleging that he sustained post-traumatic stress disorder, major depression, panic attacks and related symptoms from harassment and stress at work.

By decision dated October 6, 1995, the Office denied appellant's claim, stating that the evidence of record failed to establish that his mental condition occurred in the performance of duty. The Office denied appellant's subsequent requests for modification on October 11, 1996 and on October 16, 1997.

By letter dated September 28, 1998, appellant requested reconsideration and submitted a report dated September 28, 1998 from his treating physician, Dr. Ernesto A. Flores, a Board-certified psychiatrist and neurologist, who stated that he had treated appellant since June 25, 1991 for severe psychiatric illness, which was directly related to his employment with the employing establishment. Dr. Flores stated that appellant was under continuous treatment since 1983 and "most probably" developed generalized anxiety disorder, panic disorder and major depression "only after, and as a direct result of the January 31, 1983 job inspection, a condition which gradually worsened over time until his complete incapacitation from work."

Dr. Flores noted that on August 29, 1992 appellant sustained a herniated nucleus pulposus at L5-S1, with radicular syndrome to his leg “which severely aggravated and worsened his prior symptoms and condition.” He added:

“Following the back injury, the patient reported ‘going through hell’ with the [employing establishment] and Labor Department, attempting to get the benefits he believed he was entitled to. He became increasingly paranoid, depressed, and extremely frustrated with the above agencies. The chronic pain in his leg and back, inability to work, and inability to get his psychiatric claim recognized and approved by the Labor Department has greatly aggravated his psychiatric condition, and as the clinical picture has become more clear, in my opinion, the patient developed post-traumatic stress disorder 309.81, following the back injury.”

He concluded that appellant’s condition was “directly related to the conditions of employment with” the employing establishment.

Appellant contended that the Office erred in finding that he had not established a compensable factor of employment and therefore the medical evidence in the case should be considered. He stated that the “substantial evidence submitted, dated back to 1983” clearly showed that his psychiatric illness was directly related to a traumatic event at work which the employing establishment conceded had occurred and that job inspections and a stressful work environment continued to occur throughout his employment. He also stated that the claims examiner lacked medical training and was therefore not qualified to determine if his occupational illness was related to his employment.

The record also contains medical reports from Dr. Flores. In his February 19, 1998 report, Dr. Flores diagnosed generalized anxiety disorder, chronic major depression with suicidal homicidal ideation, which was clearly related to and aggravated by appellant’s work injury and the stressful environment at the employing establishment. In his April 30, 1998 report, Dr. Flores stated that appellant’s prior work-related anxiety and panic disorders were extremely and severely aggravated by the August 29, 1992 employment injury and the onset of acute, disabling anxiety, major depression and stress disorders developed after and “can be directly attributed” to the work injury.

In a report dated February 19, 1998, Dr. Sergio B. Pacheco stated that appellant suffered a job-related injury reflected by chronic residual post-traumatic lumbosacral pain associated with L5-S1 herniated disc entering the right lower extremity. He prescribed conservative treatment for appellant’s back condition and advised that appellant could not undergo surgery due to his psychiatric condition.

By decision dated December 22, 1998, the Office denied appellant’s request for reconsideration.

To require the Office to reopen a case for merit review under section 8128(a) of Federal Employees’ Compensation Act,¹ the Office’s regulations provide that a claimant must: (1) show

¹ 5 U.S.C. § 8128(a).

that the Office erroneously applied or interpreted a point of law; (2) advance a point of law or a fact not previously considered by the Office; or (3) submit relevant and pertinent evidence not previously considered by the Office.² Section 10.138(b)(2) provides that when an application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.³ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁴ Evidence that does not address the particular issue involved, in this case whether appellant sustained an emotional condition in the performance of duty, does not constitute a basis for reopening the case.⁵

In this case, Dr. Flores' September 28, 1998 report, in which he opined that appellant's emotional condition resulted from the January 31, 1983 job inspection and "most probably" developed into generalized anxiety disorder, panic disorder and major depression, addresses causation but is not sufficient to establish that appellant suffered a compensable factor of employment.

In emotional claims, to establish a compensable factor of employment appellant must show that his disability results from his emotional reaction to his regular or specially-assigned duties or to a requirement imposed by the employing establishment acting unreasonably or abusing its discretion in performing an administrative function.⁶ Although Dr. Flores opined that the job inspection by the employing establishment aggravated appellant's emotional condition, his reports do not establish that the inspection was a compensable factor of employment. Such job inspection constitutes an administrative function and the reports do not establish that the employing establishment acted abusively or unreasonably in performing the inspection.⁷ Dr. Flores' report does not address any other factors of appellant's employment. Dr. Pacheco's report does not address appellant's working conditions and his report does not establish a compensable factor of employment.

The legal arguments appellant raised in his brief also do not establish that a compensable factor of employment. Inasmuch as appellant has failed to show that the Office erroneously applied or interpreted a point of law, failed to advance a point of law or a fact not previously considered by the Office, and failed to submit relevant and pertinent evidence not previously considered by the Office, appellant has not established his claim.

² 20 C.F.R. § 10.138(b)(1) and (2).

³ 20 C.F.R. § 10.138(b)(2).

⁴ *Richard L. Ballard*, 44 ECAB 146, 150 (1992); *Eugene F. Butler*, 36 ECAB 393, 398 (1984).

⁵ *Richard L. Ballard*, *supra* note 4 at 150; *Edward Matthew Diekemper*, 31 ECAB 224, 225 (1979).

⁶ *Dinna M. Ramirez*, 48 ECAB 308 (1997); *see Thomas D. McEuen*, 41 ECAB 387 (1990), *reaff'd on recon.*, 42 ECAB 566 (1991).

⁷ *See Parley A. Clement*, 48 ECAB 302, 304 (1997); *Daryl Davis*, 45 ECAB 907, 910-11 (1994).

The December 22, 1998 decision of the Office of Workers' Compensation Programs is hereby affirmed.

Dated, Washington, DC
April 5, 2001

Michael J. Walsh
Chairman

Michael E. Groom
Alternate Member

Priscilla Anne Schwab
Alternate Member